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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 22, 1994

HAND DELIVERED

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Telephone and Data Systems, Inc. --
CC Docket No. 94-11

Dear Mr. Caton:

Enclosed for filing on behalf of Louisiana CGSA, Inc.,
are an original and 14 copies of its Opposition to Petition for
Stay of Proceeding.

Please contact us should you have any questions con-
cerning this filing.

Sincerely yours,

WILKINSON, BARKER, KNAUER & QUINN

L. Andrew Tollin

By: L. Andrew Tollin
Luisa L. Lancetti

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 22 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of:

TELEPHONE AND DATA
SYSTEMS, INC.

For Facilities in the Domestic
Public Cellular Telecommunications
Radio Service on Frequency Block B,
in Market 715, Wisconsin 8 (Vernon),
Rural Service Area

CC Docket No. 94-11

To: The Commission

OPPOSITION TO PETITION FOR STAY OF PROCEEDING

Louisiana CGSA, Inc. ("LCGSA"), ^{1/} by its attorneys,
hereby opposes the Petition for Stay of Proceeding filed by
Telephone and Data Systems, Inc. and United States Cellular
Corporation ("TDS/USCC") in the above-captioned proceeding. ^{2/}
The TDS/USCC Petition is procedurally and substantively infirm
and should be summarily dismissed or denied.

^{1/} LCGSA is the successor in interest to New Orleans CGSA, Inc. ("NOCGSA"). See Public Notice Report No. CL-92-29 (released December 11, 1991). NOCGSA was made a party to this proceeding in the Commission's Memorandum Opinion and Order and Hearing Designation Order in this proceeding. FCC 94-29 (released February 1, 1994) (HDO). LCGSA is a subsidiary of BellSouth Corporation.

^{2/} Petition for Stay of Proceeding, filed March 11, 1994 ("Petition").

I. The Character Qualifications Issue Raised
In The HDO Is Not Dependent On Affirmance Of
The USCC Control Finding On Appeal In La Star

In their Petition, TDS/USCC argue that the HDO is a "[d]irect [c]onsequence" of the Commission's finding in La Star Cellular Telephone Company ^{3/} that USCC controlled the La Star applicant. ^{4/} Based on this premise, TDS/USCC argue that the candor question raised in this proceeding cannot be considered apart from the control questions which are currently pending before the Court of Appeals.

The issue raised by the HDO is whether USCC, the wireline ineligible partner in the La Star joint venture, attempted to mislead the Commission as to the manner in which the La Star joint venture was operated. ^{5/} Contrary to the TDS/USCC claims, resolution of this issue is not dependent on whether substantial evidence supports the finding that USCC controlled the La Star joint venture. Indeed, even if the Court reversed the Commission's determination on the USCC control issue it would not resolve the separate character inquiry to be addressed in the instant proceeding.

^{3/} 6 FCC Rcd. 6860 (ALJ 1991), aff'd, 7 FCC Rcd. 3762 (1992), appeal pending sub nom. Telephone and Data Systems, Inc. v. FCC, Case Nos. 92-1291, 92-1294 (D.C. Cir.).

^{4/} Petition at 1.

^{5/} As stated by the Commission:

We . . . designate for hearing character issues concerning a TDS subsidiary's conduct before the Commission and whether this calls into question TDS's qualifications as a Commission licensee. [Petition at 1 (footnote omitted).]

A clear incentive existed, regardless of the outcome of the La Star case, for USCC to try to mislead the Commission that SJI Cellular, Inc. ("SJI") controlled La Star in order to establish the applicant's wireline eligibility. ^{6/} The hearing will determine whether this incentive in fact caused USCC to dissemble in its statements before the Commission. In this regard, TDS/USCC ignore the fact that the Commission was well aware of the pendency of the La Star appeal when it designated the TDS Wisconsin 8 application for a character qualifications determination. ^{7/}

TDS/USCC has had clear notice from the outset of the La Star decision that the Footnote 3 candor issue would be decided separately, and in other proceedings. ^{8/} In fact, when TDS/USCC previously sought -- in the context of the La Star judicial appeal -- to connect the unresolved Footnote 3 character issue to review of the wireline control issue, the FCC specifically stated that the two issues were not mutually dependent:

^{6/} SJI is the 51% wireline eligible partner in the La Star joint venture.

^{7/} The Commission specifically referred to the pendency of the Court appeal in the HDO. HDO at ¶6.

^{8/} In Footnote 3, the Commission expressly deferred to "future proceedings" the issue of the conduct and candor of the La Star principals in the administrative proceeding:

Questions regarding the conduct of SJI and USCC in this case may be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance. [La Star, 7 FCC Rcd. 3762, n.3 (citation omitted).]

The question of [USCC and SJI's] candor is separate from the question of whether USCC was in control of La Star following its purchase of Maxcell's ownership interest, and, as USCC acknowledges, the Commission did not resolve the candor question in this case. Thus, no relief can be afforded to USCC with respect to the candor issue in this case irrespective of the outcome with respect to the issue of control [before the Court]. If the Commission should resolve the candor issue adversely to USCC in some future proceeding that aggrieves TDS/USCC, review may be available at that time. ^{9/}

Despite TDS/USCC's efforts, the Commission has consistently confirmed that the character issue raised by USCC's conduct in the La Star proceeding is to be considered separately; in the recently released HDO, the Commission has in fact commenced a hearing to examine this different issue. There is simply no basis for TDS/USCC's claims.

II. TDS/USCC Have Not Established That A Stay Is Warranted

TDS/USCC argue that there is a "[s]ubstantial [l]ikelihood" that the Court will act shortly on the La Star appeal and the USCC control finding "[m]ay [v]ery [w]ell [n]ot [b]e [a]ffirmed." ^{10/} In point of fact, the Court may affirm or reverse, remand for clarification, partially affirm, or even partially reverse. In short, how the Court will rule -- and when -- is not knowable. The basis for the instant Petition is

^{9/} Commission Brief at 32 (emphasis added).

^{10/} Petition at 5.

totally speculative, even if the proceedings were mutually dependent.

Moreover, TDS/USCC's Petition requests extraordinary relief and the required factors for grant of such relief are well established. Those factors are:

- (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal?
- (2) Has the petitioner shown that without such relief, it will be irreparably injured?
- (3) Would the issuance of a stay substantially harm other parties interested in the proceedings?
- (4) Where lies the public interest? ^{11/}

TDS/USCC ignore this test and thus provide no ground for consideration of their stay petition.

III. The Stay Petition is In Fact An Improper Attempt to Seek Reconsideration of the HDO

While ostensibly seeking a stay, much of the TDS/USCC Petition appears to be an improper attempt to argue that no character issue should have been designated in this proceeding,

^{11/} Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); see also Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). The Commission has held that the factors set forth in Virginia Petroleum Jobbers and Holiday Tours will be applied in determining whether a stay of a Commission order will be granted. E.g., Arnold L. Chase, 4 FCC Rcd. 5085 (1989).

and that no hearing is warranted. ^{12/} For example, TDS/USCC suggest that the HDO "reflects a great misunderstanding of Mr. Nelson's testimony about the nature and functions of the Management Committee" TDS/USCC also spend much of the Petition discussing what they term "[r]epresentative examples of the HDO's misinterpretations." ^{13/} According to TDS/USCC "[t]here is no basis in the record for any of the substantial and material questions of fact which the HDO purports to raise" ^{14/}

This not-so-subtle attack on the legitimacy of the HDO is also found in the accompanying TDS/USCC Motion for Continuance of All Procedural Dates ("Motion"), filed with Administrative Law Judge Gonzalez on March 11, 1994. ^{15/} There, TDS/USCC included a 21-page side-by-side comparison which they argued showed that the HDO's conclusions are unwarranted. ^{16/}

TDS/USCC's improper challenge to the HDO should be rejected.

^{12/} Interlocutory reconsideration of the HDO is not allowed. 47 C.F.R. § 1.106. See Black Television Workshop, 4 FCC Rcd. 3871, 3872 (1989); WIOO, Inc., 68 FCC 2d 127, 128 (1978).

^{13/} Petition at 7. See discussion, Petition at 7-11.

^{14/} Id. at 10.

^{15/} Motion at 2.

^{16/} Id. at Attachment A. Judge Gonzalez denied the motion from the bench at the pre-hearing conference held March 15, 1994.

IV. TDS/USCC Asked for Commission Determination of the Character Issue Pending the Court Appeal and They Should Be Estopped From Now Pursuing A Stay

Finally, in its earlier-filed Petition to Delete or Nullify the Effect of Footnote 3, USCC argued vigorously for prompt Commission determination of the character qualifications issue raised by Footnote 3 of the Commission's La Star decision. ^{17/} USCC stated that the Footnote was causing the Company difficulties and that, despite the pendency of the La Star judicial appeal, the Commission had "full present authority to assess the weight, if any, to accord the La Star case in other proceedings." USCC argued that the Commission had jurisdiction to make such a determination and that all it asked was that "the Commission make that very assessment" ^{18/}

USCC specifically stated to the Commission that the requested ruling concerning the impact of USCC's La Star conduct on the qualifications of USCC and its affiliates was not related to the Court appeal:

USCC does not seek reconsideration of the Commission's decision in La Star . . . , nor does it seek any other ruling that would affect the case now on appeal. It leaves for that case the merits of the Commission's dismissal of the La Star application on the ground that a USCC subsidiary, and not the 51 percent shareholder, was in control of La Star. ^{19/}

^{17/} USCC Petition to Delete or Nullify Footnote 3, filed February 2, 1993 ("USCC Petition").

^{18/} USCC Reply to Oppositions, filed March 9, 1993, at 3.

^{19/} Id. at 2-3.

TDS/USCC asked that the matter be resolved promptly, at one time and in one place. ^{20/}

By the HDO, the Commission has, in fact, set the character qualifications matter for a determination on the merits. Now that the Commission has responded, TDS/USCC seek to have the character proceeding held in abeyance pending a judicial decision in La Star. TDS/USCC's obvious inconsistency in position should not be countenanced by the Commission. The instant proceeding should proceed.

CONCLUSION

For the reasons discussed above, there is no basis for deferring consideration of the TDS/USCC character qualifications

^{20/} USCC also stated that the Commission should proceed to take "additional evidence," if necessary, "to resolve [any] questions of fact left unanswered in La Star concerning the character [qualifications] of USCC" USCC Petition at 55.

issue pending a decision by the Court of Appeals in La Star. The TDS/USCC Petition should be dismissed or denied. ^{21/}

Respectfully submitted,
LOUISIANA CGSA, INC.

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Its Attorneys

Dated: March 22, 1994

^{21/} By Comments filed March 17, 1994, the Common Carrier Bureau also opposed the Petition. See Common Carrier Bureau's Comments in Opposition to Petition for Stay of Proceeding. LCGSA supports this filing.

CERTIFICATE OF SERVICE

I, Jo-Ann Grayton, certify that I have on this 2nd day of March, 1994 caused copies of the foregoing "Opposition to Petition for Stay of Proceeding" to be sent to the following by first-class mail, postage pre-paid:

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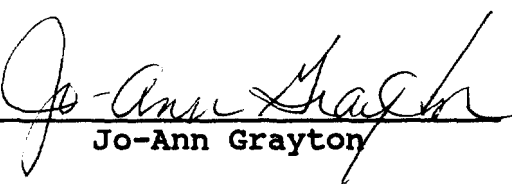
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